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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.N., et al., Persons Coming
Under the Juvenile Court Law.

B289557
(Los Angeles County Super. Ct.
No. 17LJJP00197)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.N.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Karin Borzakian, Commissioner. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Kimberly Roura, Deputy County
Counsel, for Plaintiff and Respondent.

Y.N., the mother of two young children, appeals from a juvenile court dispositional order removing the children from her care, contending the order was unsupported by substantial evidence. We affirm.

BACKGROUND

The family in this case consists of Y.N. (mother), her 11-year-old daughter, M.N., her three-year-old son, J.N., and J.A., J.N.'s father (father). In November 2017, mother and the children fled from father due to severe and ongoing domestic violence. They moved first to the maternal grandmother's house but left after a few months because father would repeatedly encounter them there, eventually settling in a domestic violence shelter. The intake counselor at the shelter reported no concerns regarding mother's ability to care for the children.

Father, his parents, and his ex-girlfriend reported that mother was the aggressor in the domestic violence, and had mental health needs that went unmet. When mother and father had lived together she believed people were spying on them through the air conditioning system and had wire tapped their car, and she would brace a chair against the front door so no one would enter the apartment. Mother claimed the paternal grandfather was trying to kill her, and father's ex-girlfriend was stalking her, and they were forced to move from the apartment because she believed someone was in the attic and people were trying to break in. Father reported he was afraid of mother, but stated she showed proper parenting skills.

When interviewed by a caretaker assessor, mother presented as “secretive,” and disclosed that she took psychotropic medication for anxiety and depression. The assessor concluded mother appeared to be the aggressor in the domestic violence, and reported concern about her mental health, stating she appeared detached and took a long time to answer questions, behavior that was consistent with schizophrenia. The assessor expressed concerns for the children’s wellbeing in mother’s care and recommended that she receive an “in-depth mental health evaluation to assess reported symptoms and linkage to psychiatrist for medication evaluation and continued medication support services.”

In November 2017, the Department of Children and Family Services (DCFS or the department) filed a Welfare and Institutions Code section 300¹ petition without having detained the children, alleging that the domestic violence between mother and father endangered the children.

At the detention hearing, the juvenile court issued a stay-away order between mother and father but initially stated it was disinclined to remove the children from either parent, provided that mother remain in the domestic violence shelter, communicate with the social worker, submit to a psychiatric evaluation, follow the treatment recommended, and participate in individual counseling.

But mother then suffered what all sides agree was an emotional breakdown. She began to interject and address the juvenile court directly, claiming that father had been violent

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

toward J.N., that the paternal grandfather had threatened to kill her, and that the paternal grandmother had dropped J.N. when he was a baby. She became highly agitated, and said, “They have hurt my baby before, and I don’t want my child alone with them.”

The children’s and DCFS’s counsel both stated that mother’s behavior was “very concerning,” and the juvenile court expressed its “serious concerns about mother’s mental health.” When mother continued to rant about father, the court stated she was “breaking down.” Mother was unresponsive to assistance from those present, pleaded that she was terrified of father having visitation rights, clung to J.N., and delivered a loud, dissociated monody while the court made its visitation orders.

In light of mother’s conduct at the hearing, the juvenile court ordered the children detained from her, released J.N. to father, and granted mother monitored visits.

In later interviews mother falsely reported that father and his parents were smoking marijuana and using cocaine in J.N.’s presence (they all tested negative for drug use), claimed father was hitting and spanking the child, and obstinately attributed a birthmark and self-inflicted scratches on the child to abuse from father, despite medical evaluations finding no evidence of abuse. A social worker would examine the child before and after visits and invite mother to do the same, always finding no signs of abuse. But mother continued to insist—and seemed truly to believe—that father was physically abusing the child.

At times during visits J.N. would resist mother and cry extensively. During one visit, mother attempted forcefully to engage with and hold the child, but he struggled and hit his head on a wall, following which mother continued to struggle with him. After mother put J.N. down, he writhed on the floor. He

sustained a bruise to his face and redness on his back, and mother sustained scratches. Yet mother denied that the child's injuries occurred during the visit, insisting father must have caused them.

In the ensuing months mother was diagnosed with Major Depressive Disorder and received mental health therapy and medication services. She completed parenting and domestic violence education programs, and was able to testify cogently over the course of a long adjudication hearing.

At that hearing, held over several days, mother testified in a composed manner, attributing her behavior during the detention hearing to an anxiety attack. Mother admitted she had engaged in extensive mutual domestic violence with father, and during their altercations J.N. had been inadvertently injured on more than one occasion. She admitted she had caused injuries to father, albeit in self-defense, but stated father sometimes inflicted injuries on himself to make people believe she had hurt him.

DCFS personnel testified that mother was sometimes hostile to social workers and to the maternal grandmother, with whom M.N. had been placed, and would repeatedly appear at the placement home despite being told by social workers and the maternal grandmother not to do so. The maternal grandmother testified that mother was a good parent.

Dependency investigator Ippolito testified there was no evidence that mother neglected or physically harmed the children, and she and father were no longer engaged in domestic violence, but "there [was] ongoing risk due to the fact that there's been previous indications of poor conflict resolution, poor coping skills,

inability to control their anger. All those things have not yet been addressed”

The juvenile court found that domestic violence between the parents endangered the children. It found that both parents “lack[ed] coping skills” and had “an inability to control their anger. They have violent outbursts and they are unable to de-escalate from arguments, and these arguments have led to some serious physical occurrences” The court found that mother lacked insight into these issues, and based on her body language while she and others testified, was “very anxious” in court throughout the proceedings. Based on these findings, the court sustained the section 300 petition and ordered that mother undergo an Evidence Code section 730 evaluation regarding mental health issues.

The juvenile court removed both children from mother’s custody and ordered that J.N. remain with father “until mother addresses her issues, her mental health issues, as well as issues regarding domestic violence and she gets some individual counseling and better addresses some of her issues, with reference to impulse control.” The court ordered that mother’s visits remain monitored at the DCFS office and granted family reunification services, including that mother participate in domestic violence, anger management and parenting programs, undergo psychological and psychiatric evaluations, take all prescribed psychotropic medications, and receive individual counseling to address mental health, conflict resolution, parenting and case issues.

Mother appealed.

DISCUSSION

Although mother nominally appeals from all jurisdiction and disposition orders, she contends only that insufficient evidence supported the removal order because no nexus existed between her mental health issues and risk of harm to the children. We disagree.

A juvenile court may take a dependent child from the physical custody of his parent where “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s [or] guardian’s . . . physical custody.” (§ 361, subd. (c)(1).)

“A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent’s past conduct as well as present circumstances. [Citation.] [¶] Before the court issues a removal order, it must find the child’s welfare requires removal because of a substantial danger, or risk of danger, to the child’s physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

“Whether the conditions in the home present a risk of harm to the child is a factual issue” to which “we apply the substantial evidence test.” (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 170.) Accordingly, “we review the evidence most favorably to the court’s order—drawing every reasonable inference and resolving all conflicts in favor of the prevailing party—to determine if it is supported by substantial evidence. [Citation.] If it is, we affirm the order even if other evidence supports a contrary conclusion.” (*Id.* at p. 168.)

The confluence of three undisputed factors persuade us that the removal order is supported by substantial evidence.

First, several sources reported, and mother concedes, that she suffers from significant, as-yet untreated mental health issues, including anxiety, depression, and paranoia.

Second, it is undisputed that mother has unresolved anger management issues that have led to persistent domestic violence.

Neither of these factors alone justifies removal, as no evidence suggests mother’s mental health problems directly imperil the children, and it is undisputed she and father no longer live together, making renewed domestic violence unlikely. (See *In re A.L.* (2017) 18 Cal.App.5th 1044, 1050 [risk of harm “may not be presumed from the mere fact of a parent’s mental illness”]; *In re James R.* (2009) 176 Cal.App.4th 129, 136 [there “must be some reason beyond mere speculation to believe the alleged conduct will recur”].)

But a third factor ties the first and second together into an ominous package: Mother desperately needs others to believe that father abuses the children. At every stage of the proceedings she has accused father and his relatives of harming J.N., always on no evidence and sometimes in the face of contrary evidence.

She claimed during her emotional breakdown that father had been violent toward J.N., that the paternal grandfather had threatened to kill her, and that the paternal grandmother had dropped J.N. when he was a baby. She said, “They have hurt my baby before, and I don’t want my child alone with them.”

After the detention hearing mother falsely reported that father and his relatives used drugs in J.N.’s presence, and father hit and spanked the child.

During visitation mother attributed to father imagined injuries she saw on J.N., and when the child was injured by her own conduct during one visit she blamed father.

And on perhaps the most bodeful note of all, mother insisted that father sometimes injured himself to make others believe she had injured him.

The confluence of mother’s untreated mental illness, penchant for domestic violence, desperate need to paint father as an abuser, and notion that a self-inflicted injury might throw suspicion on another could lead the juvenile court reasonably to conclude that mother poses a danger to the children.

No party in these proceedings has explicitly predicted that mother would injure the children to cast suspicion on father, and neither do we. But as we recently said in *In re Travis C.* (2017) 13 Cal.App.5th 1219, “[i]t is not necessary for DCFS or the juvenile court to precisely predict *what* harm will come to [dependent children] because Mother has failed to consistently treat her illness.” (*Id.* at pp. 1226-1227.) Here everyone who has encountered mother—from father and his relatives, to DCFS social workers, to the lawyers at the hearings, to the trial court itself—has expressed unease about her mental health. It would be foolish to discount these premonitions.

Substantial evidence supported the removal order.

DISPOSITION

The juvenile court's order is affirmed.

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CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

* Judge of the Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.